

## **BUSINESS ASSOCIATE ADDENDUM**

### **To Professional Administrative Services Only Agreement**

This Business Associate Addendum ("Addendum") is by and between **Blue Cross and Blue Shield United of Wisconsin** ("Business Associate") and **State of Wisconsin Group Insurance Board** ("BOARD") attached to the Wisconsin Department of Employee Trust Funds (DETF), the administrator for the State of Wisconsin group health insurance plan(s) ("PLANS"), and acting on behalf of the State of Wisconsin.

#### **RECITALS:**

WHEREAS, the PLANS which comprise the State of Wisconsin Employees Health Program are each a "Health Plan" as that term is defined in the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), specifically in 45 CFR. §160.103;

WHEREAS, the PLANS which comprise the Wisconsin Public Employers Group Health Program are each a "Group Health Plan" as that term is defined in 45 CFR §160.103;

WHEREAS, the State of Wisconsin is a "covered entity" as defined by 45 CFR §160.103 and a "hybrid entity" as defined by 45 CFR §164.103 with respect to the operation of the PLANS, administration of which is delegated to the Group Insurance Board under Wis. Stat. §§ 40.51 and 40.52, to the Secretary of the DETF under Wis. Stat. § 40.03 (2) (b) and delegated by the Secretary under Wis. Stat. § 40.03 (2) (f) to other employees within the DETF;

WHEREAS, Business Associate, with respect to its activities under the Professional Administrative Services Only Agreement with the BOARD and DETF is their "Business Associate" as that term is defined by 45 CFR 160.103;

WHEREAS, BOARD and Business Associate mutually agree to incorporate the terms of this Addendum into the Professional Administrative Services Only Agreement in order to comply with the requirements of 45 CFR §§ 164.314, 164.502(e) and 164.504(e) by the applicable deadline for compliance;

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, BOARD and Business Associate hereby agree as follows:

#### **DEFINITIONS:**

It is the intent of this agreement to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerning transaction standards, security and privacy, including the definitions in 45 CFR Parts 160 through 164. In particular, the following words and phrases in this agreement shall have the meanings specified below, unless the context clearly requires otherwise.

“Data aggregation services” has the meaning specified in 45 CFR § 164.501.

“Designated Record Set” has the meaning specified in 45 CFR 164.501.

“Enrollment” has the meaning specified in 45 CFR Part 162, Subpart O.

“Individually Identifiable Health Information” has the meaning specified in 45 CFR § 160.103.

“Individual personal information” has the meaning specified in Wis. Admin. Code § ETF 10.70 (1).

“Medical records” has the meaning specified in Wis. Admin. Code § ETF 10.01 (3m).

“Protected Health Information” has the meaning specified in 45 CFR § 160.103.

“Summary health information” has the meaning specified in 45 CFR §164.504 (a).

“Trading Partner Agreement” has the meaning specified in 45 CFR §160.103.

“Transaction” has the meaning specified in 45 CFR § 160.103.

## **PART I - BUSINESS ASSOCIATE’S OBLIGATIONS**

### **A. In General. The Business Associate shall:**

1. With respect to any obligation imposed upon Business Associate by the terms of this Addendum that requires interpretation of a provision of 45 CFR Part 164, consult with DETF concerning any question about whether compliance with a provision of 45 CFR Part 164 is necessary before making a decision that compliance is not required
2. Effective April 21, 2005, implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that it creates, receives, maintains, or transmits on behalf of the BOARD and DETF in full compliance with Title 45 of the Code of Federal Regulations, Subtitle A, Subchapter C, Part 164, Subpart C titled “Security Standards for the Protection of Electronic Protected Health Information” as that subpart may be amended from time to time.
3. Effective April 21, 2005, ensure that any agent, including a subcontractor, to whom the Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect it. Nothing in this provision, however, shall be construed to authorize any disclosure of confidential

individual personal information or medical records beyond that already authorized by the existing Professional Administrative Services Agreement.

4. Report to the DETF any security incident of which it becomes aware that directly and materially involves the PLANS, within 3 business days after becoming aware of the incident. For purposes of this subsection, a security incident that “directly and materially” involves the plans means that the incident involves direct access to PLANS’ members Protected Health Information.

B. Permitted Uses and Disclosures. Business Associate is permitted or required to use or disclose Protected Health Information it creates or receives for or from DETF or receives from BOARD or any Business Associate of DETF only as follows:

1. Functions and Activities on Behalf of DETF. Business Associate is permitted to receive from health care providers and DETF and to use confidential individual personal information as defined by Wis. Admin. Code § ETF 10.70 (1), including but not limited to medical records as defined by Wis. Admin. Code § ETF 10.01 (3m) and Individually Identifiable Health Information, but only as necessary in furtherance of its duties and responsibilities under the Professional Administrative Services Only Agreement and this Addendum. This paragraph shall not be construed to allow disclosure to any third party, which, for the purposes of this Addendum, is defined as parties other than subcontractors or agents that ETF has approved pursuant to the Professional Administrative Services Only Agreement, of confidential individual personal information which DETF itself may not disclose under Wis. Stat. § 40.07 (1) or of medical records that DETF itself may not disclose under Wis. Stat. § 40.07 (2). Any third party request for disclosure of confidential individual personal information as defined by Wis. Admin. Code § ETF 10.70 (1), including but not limited to medical records as defined by Wis. Admin. Code § ETF 10.01 (3m) and Individually Identifiable Health Information, shall be referred to DETF for a response, except as otherwise specifically provided by written agreement between DETF and the Business Associate signed or expressly reaffirmed after April 1, 2003. Any third party request for information or records, including but not limited to subpoenas, court orders, purported public record requests and disclosure requests from third parties, including those accompanied by authorizations from the patient, shall be promptly and immediately forwarded to the DETF for a response. DETF will be responsible for determining whether disclosure is permitted.
2. Data Aggregation Services. DETF agrees and recognizes that Business Associate will perform data aggregation services, for DETF. Accordingly, Business Associate may perform these Data Aggregation services in its own discretion, subject to any limitations imposed by the Professional Administrative Services Only Agreement. This provision does not supercede the requirements for confidentiality and privacy in the preceding paragraph.

3. Business Associate's Operations. Subject to the limitations on Uses and Disclosures outlined in this Business Associate Addendum, specifically including Part I, Section B, Subsection 1, Business Associate is permitted to Use and Disclose Protected Health Information:(i) as necessary for Business Associate's proper management and administration, (ii) to carry out Business Associate's legal responsibilities, and (iii) as Required by Law.
- C. Minimum Necessary. Business Associate will make reasonable efforts to use, disclose, or request only the minimum necessary amount of Protected Health Information, to accomplish the intended purpose, recognizing that the DETF has a fiduciary duty with respect to administration of the health insurance programs insured by the Public Employee Trust Fund to assure that claims are paid or denied in accord with all the terms and conditions of the health plan. Internal disclosure of such information to employees of the Business Associate shall be limited only to those employees who need the information and only to the extent necessary to perform their responsibilities under the Professional Administrative Services Only Agreement, including this Addendum.
- D. Disclosure to Business Associate's Subcontractors and Agents. Business Associate shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as Business Associate with respect to such Protected Health Information. Business Associate shall first obtain from DETF approval of such contracts, unless expressly excepted by Subsection VI of the Administrative Services Only Agreement.
- E. Disclosure Pursuant to Claims or Financial Audits. No provision of this Addendum is intended in any way to limit or otherwise impair the conditions for a claims audit or financial audit set forth in the Professional Administrative Services Only Agreement.
- F. Reporting of Improper Use or Disclosure. Business Associate will report to DETF any use or disclosure of confidential individual personal information, as defined by Wis. Admin. Code § ETF 10.70 (1), medical records, as defined by Wis. Admin. Code § ETF 10.01 (3m), or Protected Health Information, not permitted by this Addendum or in violation of 45 CFR Part 164 when Business Associate learns of such non-permitted use or disclosure.
- G. Compliance with Standard Transactions.
1. Business Associate. If Business Associate conducts, in whole or in part, transactions, for or on behalf of DETF or the BOARD, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such transactions to provide reasonable assurances, evidenced by written contract, that it will comply with each applicable requirement of 45 CFR Part 162. Further, Business Associate will require that each of its subcontractors or agents provide reasonable assurances, by written contract, that it will not

enter into a Trading Partner Agreement, in connection with its conduct of transactions for and on behalf of DETF that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data element or segment to the maximum data set; (iii) uses any code or data element that either is not in the Standard Transaction's implementation specification or is marked "not used" by the Standard Transaction's implementation specifications; (iv) changes the meaning or intent of the Standard Transaction's implementation specifications; or (v) otherwise violates 45 CFR §162.915.

2. Specific Communications. The parties recognize and agree that communications between the parties that are required to meet the standards for electronic transactions will meet the standards set by 45 CFR Part 162. Unless the parties agree otherwise in writing, all communications for purposes of "enrollment," as that term is defined in 45 CFR Part 162, Subpart O, shall be conducted between the DETF and Business Associate. For all such communications (and any other communications between DETF or BOARD and Business Associate), the forms, tape formats or electronic formats used shall be those mutually agreed upon by Business Associate and DETF.

- H. Information Safeguards. Business Associate will develop, implement and maintain and use reasonable and appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Protected Health Information, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. Business Associate will document and keep these safeguards current and furnish documentation of the safeguards to DETF upon request.

- I. Access, Amendment and Disclosure Accounting.

1. General. When Business Associate receives a written request by an individual or the individual's representative to exercise the individual's rights under the Privacy Rule pursuant to 45 CFR §§ 164.522, 164.524, 164.526, or 164.528, Business Associate shall copy the request and promptly forward it to the DETF Privacy Officer for review and coordination of approval or denial of the request. The DETF Privacy Officer, or person designated in writing by the Privacy Officer, shall thereafter instruct Business Associate in writing whether the request has been approved or denied. As detailed below in this Section, Business Associate retains the responsibility of responding to requests as directed by the DETF Privacy Officer and to the extent the requested information is in the possession of the Business Associate.
2. Access. To the extent that information is in the possession of Business Associate, Business Associate will provide access to Protected Health Information as required by 45 CFR § 164.524 on DETF's behalf, when and if expressly directed to do so by DETF. Such provision of access will not

relieve DETF of any additional and independent obligations to provide access where requested by an individual. Such access shall be provided in a time and manner consistent with Business Associate's procedures for access, which Business Associate hereby represents comply with the requirements of 45 CFR § 164.524. Accordingly, upon DETF's written request, Business Associate will make available for inspection and obtaining copies by DETF, or at DETF's direction by the individual (or the individual's representative), any Protected Health Information about the individual created or received for or from DETF in Business Associate's custody or control contained in a Designated Record Set, so that DETF may meet its access obligations under 45 CFR § 164.524. All fees related to this access, as determined by Business Associate, shall be borne by the individual requesting the access.

3. Amendment. Whenever feasible, and to the extent that responsive information is in the possession of Business Associate, Business Associate will amend Protected Health Information as required by 45 CFR § 164.526 on DETF's behalf when and if expressly directed to do so by DETF and will thereafter inform DETF of the amendment. Business Associate will amend Protected Health Information according to its own procedures for such amendment. Business Associate represents that its procedures for such amendment comply with applicable requirements of 45 CFR § 164.526. Such amendment will not relieve DETF of any additional and independent obligations to amend Protected Health Information where requested by an individual. Accordingly, upon DETF's written request, or the direct request of an individual (or the individual's representative), Business Associate will amend such Protected Health Information contained in a Designated Record Set, , in accordance with the requirements of 45 CFR § 164.526. Upon receipt of written notice from DETF, Business Associate will amend any portion of the Protected Health Information created or received for or from DETF in Business Associate's custody or control, so that DETF may meet its amendment obligations under 45 CFR § 164.526.
4. Election to Not Treat As Representative. Nothing in this agreement shall be construed to limit the discretion of the DETF, under 45 CFR 164.502 (g) (5), to elect not to treat a person as the representative of an individual.
5. Disclosure Accounting. In order that DETF may satisfy its disclosure accounting obligations under 45 CFR § 164.528(d), Business Associate agrees to record each disclosure, not excepted from disclosure accounting under 45 CFR § 164.528(a)(1), that Business Associate makes to DETF or to a third party of Protected Health Information in accordance with the requirements of this agreement and 45. CFR § 164.528(b). Nothing in this paragraph shall be construed to authorize disclosures by Business Associate to third parties, except as allowed by the Professional Administrative Services Only Agreement or by this Addendum. Business Associate will make its disclosure accounting available to DETF in a time and manner that would enable DETF to comply with its obligations under 45 CFR § 164.528.

6. Disclosure Accounting Time Periods. Business Associate will retain for six years from the date of the request all disclosure accounting information it must record to satisfy DETF's obligations under 45 CFR § 164.528 in connection with that request, except that Business Associate will not be required to create or retain such disclosure accounting information for requests or disclosures occurring prior to April 14, 2003. Disclosure accounting shall be provided according to Business Associate's own procedures for such accounting. Business Associate represents that its procedures for such accounting comply with the requirements of 45 CFR § 164.528. Such provision of disclosure accounting will not relieve DETF of any additional and independent obligations to provide disclosure accounting when requested by an individual. Upon DETF's written request or the direct request of an individual (or the individual's representative), Business Associate will provide a disclosure accounting in accordance with 45 CFR § 164.528. This accounting will be provided to DETF, and not to the individual or third parties, unless expressly authorized by DETF.
7. Request for Restriction and Confidential Information. Whenever feasible and to the extent that communications are within the control of Business Associate, Business Associate, in consultation with the DETF Privacy Officer, will evaluate and determine whether to grant a request to restrict uses or disclosures of Protected Health Information, as permitted by 45 CFR § 164.522.
- J. Inspection of Books and Records. Business Associate will make its internal practices, books, and records relating to its Use and Disclosure of Protected Health Information available to DETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining DETF's or the PLANS' compliance with the Privacy Rule. Business Associate shall notify the DETF of any inquiries made to it by HHS concerning DETF's or the PLANS' compliance with the Privacy Rule.

## **PART II – DETF'S OBLIGATIONS.**

- A. Preparation of DETF's Notice of Privacy Practices. DETF shall be responsible for any preparation and maintenance of notice of privacy practices ("NPP") that may be required under 45 CFR § 164.520 for the Standard Plans. To facilitate this preparation, upon DETF's or BOARD's request, Business Associate shall provide DETF with its NPP that DETF may use as the basis for its own NPP. DETF will be solely responsible for the review and approval of the content of its NPP, including whether its content accurately reflects DETF's privacy policies and practices, as well as its compliance with the requirements of 45 CFR § 164.520. DETF agrees to supply Business Associate with DETF's NPP, to assist Business Associate in carrying out its duties pursuant to this Addendum. Further, DETF agrees to inform Business Associate of any revisions of its NPP,

and to supply Business Associate with a copy of such revised NPP, promptly upon revision.

- B. Distribution of Notice of Privacy Practice. DETF shall bear full responsibility for distributing its own NPP as required by 45 CFR § 164.520.
- C. Changes to Protected Health Information. DETF shall notify Business Associate of any change(s) in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change(s) may affect Business Associate's use or disclosure of such Protected Health Information.

### **PART III – BOARD'S PLAN ADMINISTRATION FUNCTIONS**

- A. Communication of Protected Health Information. Except as specifically agreed upon by Business Associate and BOARD, and in compliance with the requirements imposed by this Part III of this Addendum, all disclosures of Protected Health Information from Business Associate pursuant to the Professional Administrative Services Only Agreement shall be made to DETF. DETF agrees to identify specific persons or titles of persons within DETF to whom Business Associate may disclose Protected Health Information.
- B. Summary Health Information. Upon DETF's or the BOARD's written request for the purpose either (i) to obtain premium bids for providing health insurance coverage, or (ii) to modify, amend, or terminate the PLANS, Business Associate is authorized to provide to BOARD summary health information, regarding Individuals enrolled in the PLANS.

### **PART IV - TERM, TERMINATION AND AMENDMENT**

- A. Term. The term of this Addendum shall be co-extensive with the term of the Professional Administrative Services Only Agreement, including any "Run Out Period."
- B. Termination for Breach. BOARD shall have the right to terminate the Professional Administrative Services Only Agreement if Business Associate, by pattern or practice, materially breaches any provision of this Addendum.
- C. Reasonable Steps to Cure Breach. Rather than terminating this Addendum pursuant to Section IV.B. above, BOARD may provide Business Associate with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by BOARD, in its reasonable discretion, BOARD may terminate the Professional Administrative Services Only Agreement and this Addendum, as soon as administratively feasible.



- D. Effect of Termination: Return or Destruction of Protected Health Information. Upon cancellation, termination, expiration or other conclusion of the Professional Administrative Services Only Agreement, Business Associate will, unless expressly prohibited by law (and then only to the extent necessary to comply), return to DETF or destroy all Protected Health Information, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), including all copies of and any data or compilations derived from such Protected Health Information that allow identification of any individual who is a subject of the Protected Health Information. Business Associate will complete such return or destruction as promptly as practicable after the effective date of the cancellation, termination, expiration or other conclusion of the Professional Administrative Services Only Agreement. Business Associate will not destroy any Protected Health Information without the prior express consent of DETF unless DETF has first been furnished with a copy of that information.
- E. Continuing Privacy Obligation. Notwithstanding the preceding paragraph, DETF and Business Associate may mutually agree that it is not feasible to destroy or return to DETF certain specified Protected Health Information, and may provide by mutual agreement what limited use or disclosure of such information by Business Associate may thereafter occur. Business Associate's obligation to protect the privacy of Protected Health Information that cannot feasibly or lawfully be returned or destroyed will be continuous and survive the termination of the Professional Administrative Services Agreement and this Addendum. Notwithstanding XVII (F) of the Professional Administrative Services Only Agreement, any material retained under Part IV (E) of this Addendum is perpetually subject to inspection by DETF upon reasonable notice and during Business Associate's normal business hours.
- F. Agreement to Amend. The parties acknowledge that federal laws relating to transactions, data security and privacy are rapidly evolving and that amendment to this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA and applicable federal regulations. Should the parties fail to amend this Addendum by the effective date of any final regulation or amendment to final regulations with respect to HIPAA, this Addendum will automatically be amended on such effective date such that the obligations they impose on Business Associate remain in compliance with the regulations then in effect.

## **PART V – GENERAL PROVISIONS**

- A. Conflict. The provisions of this Addendum will override and control any conflicting provision of the Professional Administrative Services Only Agreement. All non-conflicting provisions of the Professional Administrative Services Only Agreement will remain in full force and effect.
- B. No Third Party Beneficiaries. Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than BOARD, DETF and Business Associate, any rights, remedies, obligations or liabilities whatsoever.
- C. Attorneys' Fees. Except as otherwise specified in the Professional Administrative Services Only Agreement, if any legal action or other proceeding is brought by either party for the enforcement of this Addendum, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Addendum, each party shall bear their own legal expenses and other costs incurred in that action or proceeding.
- D. Indemnification. The indemnification provisions of the Professional Administrative Services Only Agreement shall equally apply to the parties' performance of duties under this Addendum.
- E. Documentation. All documentation that is required by this Addendum or by 45 CFR Part 164 will be retained by Business Associate for six (6) years from the date of creation or when it was last in effect, whichever is longer.
- F. Survival. The provisions of Part IV and Section V.E. of this Part shall survive termination of the Professional Administrative Services Only Agreement and this Addendum.
- G. Amendment of ASO Agreement. In order to conform to the purposes and intent of this agreement, Section XVII F. titled "Record Retention" of the Professional Administrative Services Only Agreement (at page 14) is hereby amended to require that both the BOARD and DETF shall have the right to access and inspect the records created by Business Associate pursuant to this Addendum for a period of six years after the term of the Professional Administrative Services Only Agreement. In addition, notwithstanding Section XVII F. as amended, the BOARD and DETF shall have the right in perpetuity to access and inspect any records retained by the Business Associate under Section IV E. of this Business Associate Agreement.
- H. Conflicts. This Addendum supercedes any conflicting provision of the Professional Administrative Services Only Agreement.

IN WITNESS WHEREOF, DETF and the BOARD, on behalf of the State of Wisconsin, and Business Associate execute this Addendum in multiple originals to be effective on April 14, 2003.

**BLUE CROSS & BLUE SHIELD UNITED OF WISCONSIN**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name  
Title

**STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYEE TRUST FUNDS**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Eric Stanchfield  
Secretary

**GROUP INSURANCE BOARD**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Stephen Frankel  
Board Chair